

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5502 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI M PARMAR

Versus

GUJARAT SLUM CLEARANCE BOARD

Appearance:

MR DM THAKKAR, for PM THAKKAR for Petitioner
NOTICE SERVED for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/07/2000

ORAL JUDGEMENT

The petitioner working on the establishment of the Gujarat Slum Clearance Board, the respondent No.1, seeks a direction on the respondents to consider his case for

promotion to the post of Section Officer with effect from 30th Sept. 1983 and to grant all consequential deemed date benefits in the cadre of Section Officer to the petitioner. A direction is also sought on the respondents to frame statutory Recruitment Rules for the post of Section Officer, Estate Officer and Divisional Accountant.

2. According to the petitioner, the respondent Board has prepared draft rules for these posts. The posts of Estate Officers and Section Officers are Class-II while that of the Divisional Accountant is a Class-III post in the Board's subordinate services. Under the draft rules, there is a provision to fill-in vacancies by direct recruitment as well as by taking persons on deputation. According to the petitioner, the respondent Board however, has not applied any criteria in the matter of filling-up the vacancies by way of promotion and has acted in an arbitrary and discriminatory manner. It is submitted that since he was appointed on 21.11.1973, he became eligible for promotion to the post of Senior Clerk on 21.11.1976. However, the petitioner was not given his due promotion, since he was the General Secretary of the Employees' Union at the relevant time. Ultimately, the petitioner was promoted to the post of Senior Clerk on 30.6.1979. In the seniority list of senior clerks, the petitioner's name was shown alongwith Mr. H.N. Bhalodi without showing their seniority numbers. The petitioner therefore, filed objections contending that he was senior most in the next lower cadre of junior clerk and therefore, he should be shown at serial No.1 in the seniority list of Senior Clerks as on 31.3.1981. In the final seniority list published on 29.9.81 of the cadre of senior clerks, the petitioner was thereafter shown at serial No.1. According to the petitioner, in Sept. 1983 the post of Divisional Accountant fell vacant and as the petitioner was senior most with clean service record, he was entitled to be considered for the promotion to that post. However, Shri H.N. Bhalodi came to be promoted to that post by order dated 23.9.1983. Since the promotion of H.N. Bhalodi was on adhoc basis, the petitioner did not challenge it at that time. Thereafter, one N.V. Shah, who was a Section Officer, resigned with effect from 30th Sept. 1983 and thereupon a clear vacancy of Section Officer arose on the establishment. According to the petitioner, he was entitled to be considered for promotion to that post, but the petitioner was denied his legitimate right. The respondent Board kept the post of Section Officer vacant and on the other hand, they promoted Mr. H.N. Bhalodi as Divisional Accountant on regular basis. The petitioner made a representation on

8th March, 1984 that he should be considered for regular appointment to the post of Section Officer, as also Divisional Accountant. However, with a view to defeat the petitioner's claim, by order dated 7.2.1986, services of the petitioner were placed under the establishment of Gujarat Scheduled Caste and Economic Development Corporation on deputation basis, where he was posted as Assistant Manager. The petitioner resumed that duty as a prudent and sincere employee of the Board, as stated by him. Again he made a representation on 7.7.1987 for promotion to the post of Section Officer. The petitioner however, was not considered for the post and instead an advertisement was issued on 1.8.1988, inviting applications from the eligible persons for filling-up the vacancy of Estate Officer by way of direct recruitment and hence, this petition.

3. The case of the respondent Board is that the petitioner was not eligible for the post of Divisional Accountant, nor did he have any right to claim promotion to that post. It is stated that having considered the financial constraints of the Board, a decision was taken to keep the post of Section Officers in abeyance. As regards the post of Divisional Accountant, it is stated that it was filled-in by way of direct recruitment through a public advertisement and all the eligible persons were duly considered, including the employees of the Board, who had applied for the post. Mr. Bhalodi came to be selected to that post by way of direct recruitment and therefore, the petitioner could not make a grievance against his selection. It thus, appears that there has not been any violation of the right of the petitioner, since appointment of Mr. Bhalodi as Divisional Accountant was by way of direct recruitment. The post of Section Officer is not to be filled-up in view of the decision to keep it in abeyance. The authorities cannot be forced to make promotions notwithstanding the decision taken of not filling-up the posts due to financial constraints. If the post of Section Officer is not to be filled-up, there can survive no question of considering the petitioner for promotion to that post. As no right of the petitioner is violated and the petitioner cannot claim promotion as a matter of right, no relief of the nature claimed can be granted to the petitioner. The petition is therefore, rejected. Rule is discharged with no order as to costs.

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